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1416 Ninth Street, Room 1320
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(916) 653-4899

Fish and Game Commission



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2

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[Signature]

August 20, 2015

TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action relative to amend Sections 163 and 164, Title 14, California Code of Regulations, relating to commercial herring fishery regulations, which will be published in the California Regulatory Notice Register on August 21, 2015.

Please note the date of the public hearing related to this matter and associated deadlines for receipt of written comments.

Mr. Ryan Bartling, Department of Fish and Wildlife, phone 707-576-2877, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

Sheri Tiemann
Sheri Tiemann

Associate Governmental Program Analyst

Attachment

LOS ANGELES COUNTY
2015 SEP - 3 PM 5:24
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COMMISSION SERVICES

TITLE 14. Fish and Game Commission

Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 1050, 5510, 8389, 8550, 8552.1, 8553 and 8555, of the Fish and Game Code and to implement, interpret or make specific sections 713, 1050, 7850, 7850.5, 7852.2, 7881, 8043, 8053, 8389, 8550, 8550.5, 8552, 8552.1, 8552.2, 8552.3, 8552.4, 8552.5, 8552.6, 8552.7, 8552.8, 8553, 8554, 8555, 8556, 8557, and 8559 of said Code, proposes to amend sections 163 and 164, Title 14, California Code of Regulations, relating to the commercial herring fishery.

Informative Digest/Policy Statement Overview

Sections 163 and 164, Title 14, California Code of Regulations, specify that herring may be taken for commercial purposes only under a revocable permit, subject to such regulations as the Fish and Game Commission shall prescribe. Current regulations specify: permittee qualifications, permit application procedures and requirements, permit limitations, permit areas, vessel identification requirements, fishing quotas, seasons, gear restrictions, and landing and monitoring requirements.

Annual fishing quotas are necessary to provide for a sustainable fishery. The proposed regulatory changes in Section 163 will establish the fishing quota for the 2015-16 season in San Francisco Bay:

- Set the San Francisco Bay quota for the 2015-16 season from zero (0) to five percent of the 2014-15 San Francisco Bay spawning biomass estimate for Pacific herring as provided in the 2015 Draft Supplemental Environmental Document. The Department is recommending a quota of five percent or 834 tons.

The proposed regulatory changes in Section 164 will establish the HEOK fishing quota and amend the permit renewal date and form for the San Francisco Bay fishery:

- A minor editorial change will be made to Section 164 indicating a change in the revision date (Rev. 2/14) to (Rev. 06/04/15) on the HEOK Royalty Report Form.
- A minor change will be made to Section 164 indicating that renewal of all HEOK permits are to be received by the Department, or if mailed, postmarked, on or before the first Friday of October each year. The revision is necessary to update the "permit application date" and align with the renewals dates for all other herring permits.
- Increase the San Francisco Bay HEOK quota allocation for individual HEOK permits from 0.79 to 1.0 percent of the overall quota as specified in Section 163 for harvest of herring.

Benefits of the Regulation

The Commission anticipates benefits to the State's environment and the health and welfare of California residents. The proposed regulation changes are intended to set annual harvest quotas within a range that will maintain sustainable herring populations for their ecological values and commercial use. Maintaining a sustainable herring fishery also encourages consumption of local seafood.

The Commission does not anticipate any non-monetary benefits to worker safety as a result of the proposed regulation.

Consistency with State or Federal Regulations

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate the commercial take of herring (sections 8550 and 8553, Fish and Game Code). The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the California Code of Regulations and finds no other state agency regulations pertaining to the commercial take of herring. There are no comparable federal regulations for the commercial harvest of herring.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Embassy Suites -- LAX North, 9801 Airport Boulevard, Los Angeles, California, on October 7, 2015, at 8 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before September 24, 2015, at the address given below, or by e-mail to FGC@fgc.ca.gov. Written comments mailed or e-mailed to the Commission office, must be received before 5:00 p.m. on October 5, 2015. All comments must be received no later than October 7, 2015, at the hearing in Los Angeles, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sonke Mastrup or Sheri Tiemann (back-up contact) at the preceding address or phone number. **Ryan Bartling, Marine Region, Department of Fish and Wildlife, phone (707) 576-2877, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action/Results of the Economic Impact Analysis

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

Herring roe prices are set on the international market and not directly impacted by California regulations and quotas. Recently, herring roe has declined in value due to a market oversupply and a decline in overall demand. As a result, no adverse incremental economic impact to businesses, including the ability of California businesses to compete with businesses in other states, is anticipated to occur with a quota allocation of 50 tons or more. However, a zero ton quota would eliminate any revenues from the California herring fishery. This impact could be mitigated to the extent that fishermen can pursue other species; the total economic impact should not be significant.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California.

Due to poor market conditions and low participation by the herring fleet during the 2014-15 season, any quota option over 50 tons will likely result in positive incremental contributions to employment for the State: for example, an increase of about 71 jobs for a quota of 834 tons (see section VII of the Initial Statement of Reasons). Conversely, a zero (0) ton quota could adversely impact about four jobs in the fishing industry and related industries. This is based on an employment multiplier of 27 jobs per each million dollar change in direct output from commercial herring fishing activities.

Most commercial herring industry participants are small businesses (as defined under California Government Code Section 11342.610), which may incur a detriment under a quota option less than 50 tons for San Francisco Bay. The total harvest of Pacific herring landed during the 2014-2015 season was 46 tons, though the allowable quota was 2,500 tons. This low exploitation rate and participation level by the herring fleet was driven by poor international market conditions. Due to the small scale and seasonality of the California herring fishery it is unlikely that any of the proposed quota options alone would cause the elimination/expansion of existing businesses in the State.

Benefits of the Proposed Regulatory Action:

The Commission anticipates benefits to the State's environment and the health and welfare of California residents. The proposed regulation changes are intended to set annual harvest quotas within a range that will maintain sustainable herring populations for their ecological values and commercial use. Maintaining a sustainable herring fishery also encourages consumption of local seafood.

The Commission does not anticipate any non-monetary benefits to worker safety as a result of the proposed regulation.

(c) Cost Impacts on a Representative Private Person or Business:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. There are no new fees or reporting requirements stipulated under the proposed regulations.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

(e) Nondiscretionary Costs/Savings to Local Agencies: None.

(f) Programs Mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

(h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Dated: August 11, 2015

Sonke Mastrup
Executive Director

Commissioners
Jack Baylis, President
Los Angeles
Jim Kellogg, Vice President
Discovery Bay
Jacque Hostler-Carmesin, Member
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Fish and Game Commission



Wildlife Heritage and Conservation
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August 20, 2015

TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action relative to amend Sections 29.80 and 29.85, Title 14, California Code of Regulations, relating to recreational Dungeness crab and crab trap regulations, which will be published in the California Regulatory Notice Register on August 21, 2015.

Please note the date of the public hearing related to this matter and associated deadlines for receipt of written comments.

Ms. Christy Juhasz, Department of Fish and Wildlife, phone 707-576-2887, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

Sheri Tiemann
Associate Governmental Program Analyst

Attachment

LOS ANGELES COUNTY

2015 SEP -3 PM 5:24

RECEIVED
BOARD OF SUPERVISORS
COMMUNITY SERVICES

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 215, and 220, of the Fish and Game Code, and to implement, interpret or make specific sections 200, 202, 205, 206, 215, and 220, of said Code, proposes to amend subsections (c) and (e) of Section 29.80, and subsections (a)(3) and (a)(7) of Section 29.85, Title 14, California Code of Regulations, relating to recreational Dungeness crab and crab trap regulations.

Informative Digest/Policy Statement Overview

Under existing law, Dungeness crab may be taken for recreational purposes with a sport fishing license subject to regulations prescribed by the Fish and Game Commission (Commission). Current regulations specify seasons, size limits, bag and possession limits, closed fishing areas, and gear restrictions.

Recreational fishing groups and constituents, including the Coastside Fishing Club, the Golden Gate Fishermen's Association, and one Commercial Passenger Fishing Vessel (CPFV) Captain, sent letters to the Department of Fish and Wildlife (Department) and the Commission requesting several changes to Dungeness crab recreational fishery regulations. They proposed making the current Dungeness crab daily bag limits and size limits uniform statewide at ten crab that are a minimum of 5.75 inches carapace width, in order to eliminate the unfairness to fishers aboard CPFVs in Sonoma, Marin, San Francisco, San Mateo, Santa Cruz, and Monterey counties, who are only allowed to take six crab that are 6 inches or greater under current regulations. The Department has reviewed landings data for the commercial fleet in this region for the past ten seasons and recent recreational catch estimates. While there is no resource allocation between sectors, the data suggest that the increase in CPFV bag limit and decrease in minimum size limit would not significantly alter use patterns between sectors, and that maintaining different bag and size limit for CPFVs in these counties is not warranted. Therefore the Department is proposing that the separate CPFV regulatory language be removed.

The Coastside Fishing Club also requested that recreational crab traps be required to contain a destruct device to prevent 'ghost fishing' by lost traps, and that the trap buoys must contain the contact information of the crab trap operator to deter theft of crabs from traps. The Department is proposing that each crab trap possess a destruct device similar to commercial crab traps, and that each crab trap buoy must display the trap owner's GO ID number located on his/her sport fishing license.

Lastly, the Department proposes a seven day waiting period prior to the start of the Dungeness crab recreational season for deploying crab traps. This would prohibit the covert targeting of Dungeness crab under the guise of rock crab fishing before the start of the season.

In addition to these changes, the Department is proposing to add clarifying language to subsection (e) of Section 29.80, Title 14, CCR, specifying that Point Arguello is located in Santa Barbara County.

The following Title 14, CCR, regulation changes are proposed to become effective prior to the start of the 2015-16 Dungeness crab season (i.e., November 7, 2015, the first Saturday in November):

1. Remove the bag and minimum size exception language in subsections (a)(3) and (a)(7) of Section 29.85 that limits CPFVs in Sonoma, Marin, San Francisco, San Mateo, Santa Cruz, and Monterey counties to the take of six Dungeness crab that are 6 inches in carapace width or greater.
2. Add Santa Barbara County as the location of Point Arguello under subsection (e) of Section 29.80.

The following Title 14, CCR, regulation changes would specify an effective date of August 1, 2016, which immediately follows the close of the 2015-16 Dungeness crab season:

3. Add language to subsection (c) of Section 29.80 that requires, as of August 1, 2016, crab traps to have one destruct device of a single strand of untreated cotton twine size No. 120 or less that creates an unobstructed escape opening in the top or upper half of the trap of at least five inches in diameter when the destruct attachment material corrodes or fails.
4. Add language to subsection (c) of Section 29.80 that requires, as of August 1, 2016, every crab trap to be marked with a buoy and that each buoy shall be legibly marked to identify the operator's GO ID number as found on his/her sport fishing license.
5. Add language to subsection (c) of Section 29.80 that prohibits, as of August 1, 2016, crab traps from being deployed in ocean waters seven days prior to the opening of the Dungeness crab season.

Benefits of the Regulation

The Commission anticipates benefits to the State's environment and the health and welfare of California residents. The proposed regulation changes are intended to provide increased fishing opportunity, reduce incidences of derelict trap gear continuing to fish, deter crab theft and promote a more orderly fishery at the start of the Dungeness crab season, and eliminate unfairness and unnecessary complexity in the bag and size limit regulations. The Commission anticipates benefits to the environment by the sustainable management of California's Dungeness crab resources.

Consistency with State or Federal Regulations

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate the recreational take of Dungeness crab, specifically the size and bag limits and means of taking (FGC sections 200 and 205). The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the CCR and finds no other state agency regulations pertaining to the recreational take of Dungeness crab and the use of crab traps while recreational fishing.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Embassy Suites -- LAX North, 9801 Airport Boulevard, Los Angeles, California, on October 7, 2015, at 8 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before September 24, 2015, at the address given below, or by e-mail to FGC@fgc.ca.gov.

Written comments mailed or e-mailed to the Commission office, must be received before 5:00 p.m. on October 5, 2015. All comments must be received no later than October 7, 2015, at the hearing in Los Angeles, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sonke Mastrup or Sheri Tiemann at the preceding address or phone number. **Dr. Craig Shuman, Regional Manager of the Marine Region, Department of Fish and Wildlife, phone (805) 568-1246, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action/Results of the Economic Impact Analysis

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed changes are necessary for the continued preservation of the resource and therefore the prevention of adverse economic impacts.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in

California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California. The proposed regulation changes are intended to provide increased fishing opportunity, reduce incidences of derelict trap gear continuing to fish, deter crab theft and promote a more orderly fishery at the start of the Dungeness crab season.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities for a Dungeness crab recreational fishery encourages consumption of a nutritious food.

The Commission anticipates benefits to the environment by the sustainable management of California's Dungeness crab resources.

The Commission does not anticipate any non-monetary benefits to worker safety.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

(e) Nondiscretionary Costs/Savings to Local Agencies: None.

(f) Programs Mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.

(h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Dated: August 11, 2015

Sonke Mastrup
Executive Director

Commissioners
Jack Baylis, President
Los Angeles
Jim Kellogg, Vice President
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Jacque Hostler-Carmesin, Member
McKinleyville
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STATE OF CALIFORNIA
Edmund G. Brown Jr., Governor

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Fish and Game Commission



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August 20, 2015

TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action relative to Section 180.6, Title 14, California Code of Regulations, relating to commercial hagfish traps, which will be published in the California Regulatory Notice Register on August 21, 2015.

Please note the date of the public hearing related to this matter and associated deadlines for receipt of written comments.

Mr. Travis Tanaka, Environmental Scientist, Marine Region, Department of Fish and Wildlife, (831) 649-2881 or Travis.Tanaka@wildlife.ca.gov, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

Sherrie Fonbuena
Associate Governmental Program Analyst

Attachment

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BOARD OF SUPERVISORS
COMMISSION SERVICES
2015 SEP -3 PM 5:24
LOS ANGELES CITY

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 8403 and 9022 of the Fish and Game Code and to implement, interpret or make specific Sections 8403, 9001.6, 9001.7 and 9022 of said Code, proposes to amend Section 180.6, Title 14, California Code of Regulations (CCR), relating to commercial hagfish traps.

Informative Digest/Policy Statement Overview

Current statutes provide that Pacific hagfish, *Eptatretus stoutii*, (hagfish) may be taken by Korean style traps or 5-gallon bucket traps; specify the maximum number of traps allowed by trap type; require a general trap permit; prohibit possession of other species or gear while targeting or having in possession hagfish, and prohibit the use of popups on buoy lines for bucket and Korean traps (Sections 9000.5, 9001, 9001.6, Fish and Game Code). Fish and Game Code subsection 9001.6(a) is only a limitation on the use of Korean and bucket traps, not a limitation on the type of gear that may be used to take hagfish. Current regulation provides that all escapement holes, except for the entrance funnel, must have a minimum diameter of 9/16 inch (Section 180.6, Title 14, CCR) to minimize take of immature hagfish.

Proposed Regulation

The proposed changes to Section 180.6, Title 14, CCR, will allow hagfish to be taken in 40-gallon barrel traps and will allow the use of up to two ground lines and up to 25 barrel traps per vessel. The proposed regulation specifies that if using barrel traps, no other trap type may be used or possessed aboard the vessel, and popups are not authorized for use with buoy lines attached to barrel traps.

BENEFITS OF THE PROPOSED REGULATIONS

The proposed regulations could reduce or eliminate negative interactions with cetaceans and other fishing gear, and lost fishing gear, particularly in areas utilized by multiple fisheries. The larger capacity of this trap type could reduce stress or mortality of captured hagfish due to crowding.

Adoption of sustainable fishing regulations including gear type provides for the maintenance of sufficient fish populations and ensures their continued existence.

EVALUATION OF INCOMPATIBILITY WITH EXISTING REGULATIONS:

Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate the commercial take of finfish using traps (Sections 8403 and 9022, Fish and Game Code). No other State agency has the authority to promulgate commercial fishing regulations. The proposed regulations are compatible with Sections 180, 180.2, 180.4 and 180.5, Title 14, CCR, which address other aspects of commercial take of finfish using traps. The Commission has searched the CCR for any regulations regarding the use of traps for the commercial take of hagfish and has found no such regulation; therefore the Commission has concluded that the proposed regulations are neither inconsistent nor incompatible with existing State regulations.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Embassy Suites – LAX North, 9801 Airport Boulevard, Los Angeles, California, on Wednesday, October 7, 2015, at 8:30 a.m., or as soon thereafter as the matter may be heard. Written comments may be submitted at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed or emailed to the Commission office, must be received before 5:00 pm on October 5, 2015. **All comments must be received no later than October 7, 2015 at the hearing in Los Angeles, California.** If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sonke Mastrup or Sherrie Fonbuena at the preceding address or phone number.

Travis Tanaka, Environmental Scientist, Department of Fish and Wildlife, (831) 649-2881 or Travis.Tanaka@wildlife.ca.gov, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action/Results of the Economic Impact Analysis

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulation will offer commercial hagfish fishermen an option to use fishing gear that could reduce financial loss related to lost fishing gear.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California or any benefits to the health and welfare of California residents or worker safety.

The Commission does anticipate possible benefits to the State's environment due to the anticipated reduction in lost fishing gear.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The use of the proposed trap is voluntary. However, should a fisherman choose to change gear types, the approximate cost of one barrel trap is \$60, ground line (including buoy and two weights) cost could range from \$75 to \$150. Based on the current minimum wage, the cost for labor to construct new traps is estimated to be \$27.00 per trap.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Dated: August 11, 2015

Sonke Mastrup,
Executive Director

Commissioners
Jack Baylis, President
Los Angeles
Jim Kellogg, Vice President
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STATE OF CALIFORNIA
Edmund G. Brown Jr., Governor

Sonke Mastrup, Executive Director
1416 Ninth Street, Room 1320
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Fish and Game Commission



Wildlife Heritage and Conservation
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August 20, 2015

TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action relative to amend Sections/ (subsections) 1.05, 1.53, 1.86, 2.00, 5.60, 5.80, 5.81, 7.00, 7.50(b)(156.5) and (b)(180.6), 27.00, and 230; and Add Sections 1.57 and 5.41, Title 14, California Code of Regulations, relating to Freshwater Sport Fishing Regulations, which will be published in the California Regulatory Notice Register on August 21, 2015.

Please note the date of the public hearing related to this matter and associated deadlines for receipt of written comments.

Ms. Karen Mitchell, Department of Fish and Wildlife, phone 916-445-0826, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,


Jon Snellstrom
Associate Governmental Program Analyst

Attachment

LOS ANGELES CA 90012

2015 SEP -3 PM 5:24

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SEP 3 2015

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 205, 215, 220, 240, 315, 316.5, and 2003, Fish and Game Code and to implement, interpret or make specific Sections 200, 205, 206, 215, 220 and 316.5 of said Code, proposes to amend Sections/ (subsections) 1.05, 1.53, 1.86, 2.00, 5.60, 5.80, 5.81, 7.00, 7.50(b)(156.5) and (b)(180.6), 27.00, and 230; and Add Sections 1.57 and 5.41, Title 14, California Code of Regulations, relating to Freshwater Sport Fishing Regulations.

Informative Digest/Policy Statement Overview

This Department proposal combines Department and public requests for changes to Title 14, California Code of Regulations (CCR), for the 2015 Freshwater Sport Fishing Regulations Review Cycle. This proposal will clarify regulations for snagging, landlocked salmon, San Francisco and San Pablo Bays, Solano Lake, and reptiles, to reduce public confusion and improve regulatory enforcement. Additionally, this proposal will add a new fishing restriction to protect sturgeon, and increase fishing opportunities on the Sacramento River.

The Department is proposing the following changes to current regulations:

Snagging Definition

Subsection 2.00(b) would be amended to further define snagging. Currently, the snagging definition states that it is illegal to impale a fish in any part of its body **other than the mouth**. This makes it legal for anyone to keep a fish that has been hooked on the outside of the mouth, such as a hook that enters from the lower jaw into the mouth or nose into the mouth. The proposal is to reword the definition to say **other than inside the mouth**. Subsections 2.00(b) and (c), and Section 1.05 will need to be amended for consistency.

Proposal: Amend Section 1.05, Angling, and subsections (b) and (c) of Section 2.00, Fishing Methods - General

Amend the regulations to clarify that it is illegal to take a fish not hooked on the inside of the mouth.

Landlocked Salmon Definition

Current regulations incorporate kokanee (*Oncorhynchus nerka*) into the definition of "Trout," and stocked, landlocked Chinook salmon into the definition of "Salmon," which includes anadromous forms of salmon. Scientific evidence, including life history variation and behavioral differences, suggests the need for differing management strategies for these species. They should be separately defined and addressed in the freshwater sport fishing regulations. In addition, these new species definitions need to have associated bag and possession limits.

Proposal: Amend Section 1.86, Trout; Section 7.00, District General Regulations; add sections 1.57 and 5.41, Landlocked Salmon

Create a new definition for landlocked salmon which will include kokanee and landlocked Chinook salmon. New daily bag and possession limits for landlocked salmon are proposed in a new Section 5.41. The new bag limit will be 5 fish and the possession limit will be 10 fish. Amend the District General Regulations in Section 7.00 to revise the references to trout and salmon to just trout except for daily bag and possession limits which means the total number of trout or landlocked salmon in combination. This change is proposed to reduce public confusion with landlocked salmon versus anadromous salmon that are allowed only in the Section 7.50 Special Regulations since the General District Regulations has the take of anadromous salmon closed statewide.

Reptile Regulation Correction

A numbering error has been identified in Section 5.60, specifically subsections (b)10 through (b)14. The regulation incorrectly reads, "Species No. 9- 13 have a limit of twenty-five (25) in the aggregate." It should read, "Species No. 10-14 have a limit of twenty-five (25) in the aggregate." Correcting the numbering mistake will alleviate confusion amongst sport fisherman and wildlife officers.

Proposal: Amend subsection (b) of Section 5.60, Reptiles

Correct the numbering errors in this section to reduce public confusion and enforcement issues.

Sturgeon Fishing Closure

Green sturgeon and white sturgeon (subadults and adults) are often stranded for long periods in the Yolo Bypass as well as the Toe Drain and Tule Canal upstream of Lisbon Weir. Some of those fish escape when environmental conditions change but others are rescued or succumb. Through catch-and-release, legal harvest, and poaching, anglers could take both species when stranded. The legal fishery on stranded fish is not sporting, reduces the benefit of rescue efforts, and reduces population spawning potential. Because green sturgeon is a threatened species and white sturgeon is a substantial management concern, addressing this issue is relatively urgent. Therefore, the Department is proposing to prohibit the take and possession of sturgeon in the Yolo Bypass as well as the Toe Drain and Tule Canal upstream of Lisbon Weir at any time.

Current regulations in subsection (d) of Section 5.80 state that a sturgeon must voluntarily take the bait or lure *in* its mouth. This language is proposed to be revised to read *inside* its mouth, to be consistent with proposed revisions to the snagging definition in Section 2.00.

Proposal: Add subsection (i) to Section 5.80 and amend subsection (d), White

Sturgeon, Methods of take.

Prohibit fishing for sturgeon in the Yolo Bypass Flood Control System to protect green and white sturgeon.

Amend the regulations to clarify that it is illegal to take a fish not hooked on the inside of the mouth for alignment with the proposed snagging definition changes to Section 2.00.

Green Sturgeon Revision for Brevity

Take and possession of green sturgeon is prohibited by law. Section 5.81, Green Sturgeon, subsection (d) designates a special fishing closure for sturgeon in the Sierra and Valley District. This special fishing closure is also provided under Section 5.80, White Sturgeon. Because fishing for green sturgeon is prohibited, this regulation is not needed in the regulations for Green Sturgeon.

Proposal: Remove subsection (d) from Section 5.81, Green Sturgeon.

Fishing for green sturgeon is prohibited. Therefore, the special fishing closure regulation for sturgeon is not need in Section 5.81.

Red Bluff Diversion Dam

Current regulations restrict fishing from 500 feet upstream to 150 feet below Red Bluff Diversion Dam (RBDD). RBDD is no longer operated as an irrigation diversion so the current restrictions about fishing near a dam are no longer needed. Boaters, and recreationists, and fish are free to pass up and downstream of the area at will. The angling public is very interested in angling in the immediate vicinity of the RBDD now that it is no longer in operation and the Sacramento River is not impounded by its gates. The proposal is to allow shore and boat angling above and below RBDD on the Sacramento River.

Proposal: Amend Special Fishing Regulations subsection (b)(156.5), Sacramento River

Remove the current fishing restriction above and below RBDD on the Sacramento River to increase angling opportunities in Tehama County.

Solano Lake

The proposal is to add Solano Lake to Section 7.50, *Alphabetical List of Waters with Special Fishing Regulations*. The original intent was for Solano Lake to be included in the Putah Creek special fishing regulations. That regulation applies to the stream reach from Solano Lake to Monticello Dam and does not include Solano Lake. Therefore, a new subsection needs to be added to Section 7.50.

Proposal: Add subsection (b)(180.6), Solano Lake, to the Special Fishing Regulations

Add a new regulation for Solano Lake to the Special Fishing Regulations. The daily bag

and possession limit will be 0 (zero).

San Francisco and San Pablo Bays Clarification

Currently there are three sections dealing with the Ocean and San Francisco Bay District which describe regulations in different manners causing confusion for anglers and making enforcement of the regulations more difficult:

- Section 27.00 defines the Ocean and San Francisco Bay District as waters of the open coast and includes San Francisco and San Pablo Bays *"plus all their tidal bays, tidal portions of their rivers and streams, sloughs and estuaries"* between the Golden Gate Bridge and the Carquinez Bridge.
- Section 1.53 defines inland waters as all fresh, brackish and inland saline waters of the state, including lagoons and tidewaters upstream from the mouths of coastal rivers and streams. Inland waters exclude the waters of San Francisco and San Pablo Bays downstream from the Carquinez Bridge, the tidal portions of rivers and streams flowing into San Francisco and San Pablo Bays, and the waters of Elkhorn Slough, west of Elkhorn Road between Castroville and Watsonville.
- Section 28.65(a) (which describes gear restrictions for fin fish). Defines the area as San Francisco and San Pablo Bays between the Golden Gate Bridge and the west Carquinez Bridge, where only one line with not more than three hooks may be used.

The different definitions of the same geographic area cause confusion as to applicable method of take as well as which set of regulations apply to the waters being fished.

An angler is allowed to use any number of hooks and lines in the ocean waters (Section 28.65). In Inland waters only one closely attended line with no more than three hooks may be used (Section 2.00). Under current regulations, a person could argue that tidal portions of the Napa River were not Inland Waters and since Section 28.65(a) did not include the tidal portions of river flowing into San Francisco and San Pablo Bays. Under this interpretation, they could use any number of lines and hooks to fish in the Napa River. This would restrict waters of San Francisco and San Pablo Bay to one line, then allow unlimited lines in the Napa River waters which were tidally influenced even though all inland waters are restricted to one line.

In addition, fishing regulations for Ocean Waters defined in Section 27.00 are different from Inland Waters as defined in Section 1.53. Since tidal influence cannot easily be determined, it is almost impossible to know which set of regulations apply in the tidally influenced waters. For instance is an undersized sturgeon caught in the Napa River a

violation of section 5.80 or Section 27.90?

To simplify the regulations and make all of the regulations consistent, all three sections must use the same reference.

The proposal is to amend sections 27.00 and 1.53 to align with Section 28.65(a) and remove the reference to tidal bays and tidal portions of rivers and streams from these two sections. As a result, inland waters will now include the tidal portions of rivers and streams flowing into San Francisco and San Pablo Bays which will be subject to the gear restrictions for inland waters where only one closely attended rod and line with no more than three hooks may be used.

Proposal: Amend Section 1.53, Inland Waters, and Section 27.00, Ocean and San Francisco Bay Definition

Amend the two regulations that define the San Francisco and San Pablo Bays to be consistent, reducing public confusion and enforcement issues. Remove capitalized text before the note which is a printing error.

Fishing Contest Draw Dates

The current wording of subsection 230(b)(1)(A) designates specific dates for a drawing that is conducted annually by Department personnel to allocate Type A fishing contest permits in a fair manner. Dates are the second Friday of July for bodies of water north of the Tehachapi Mountains and the third Friday of July for waters south of the Tehachapi Mountains.

Specific designation of these dates can conflict with major fishing-related events that contest sponsors often need to attend (e.g., International Convention of Allied Sport fishing Trade – ICAST). Sponsors who must attend the ICAST show—an international conference of fishing gear manufacturers, media, and many others—cannot simultaneously attend the contest drawing, hindering the conflict resolution process for which the drawing is held.

The Department is proposing to amend the regulations to state that the contest drawings will be conducted in July and the dates will be determined by Department staff.

Proposal: Amend subsection (b)(1)(A) of Section 230, Issuance of Permits for Contests Offering Prizes for the Taking of Game Fish

Amend the regulations to change the current contest drawing dates to unspecified dates in July which will be determined by Department staff.

Minor Editorial Corrections for Clarity

Additional editorial corrections are proposed to correct typographical errors and to

improve regulation clarity.

Benefits of the Proposed Regulations

It is the policy of this state to encourage the conservation, maintenance, and utilization of the living resources of the ocean and inland waters under the jurisdiction and influence of the state for the benefit of all the citizens of the State. In addition, it is the policy of this state to promote the development of local California fisheries in harmony with federal law respecting fishing and the conservation of the living resources of the ocean and inland waters under the jurisdiction and influence of the State. The objectives of this policy include, but are not limited to, the maintenance of sufficient populations of all species of aquatic organisms to ensure their continued existence and the maintenance of a sufficient resource to support a reasonable sport use. Adoption of scientifically-based trout and salmon seasons, size limits, and bag and possession limits provides for the maintenance of sufficient populations of trout and salmon to ensure their continued existence.

The benefits of the proposed regulations are concurrence with Federal law, sustainable management of California's trout and salmon resources, and promotion of businesses that rely on recreational sport fishing in California.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

The Commission has evaluated the proposed regulation and has determined that these are the only regulations dealing with inland sport fishing. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at Embassy Suites – LAX North, 9801 Airport Boulevard, Los Angeles, California, on Thursday, October 8, 2015, at 8:00 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Town and Country Resort and Convention Center, 500 Hotel Circle North, San Diego, California, on Thursday, December 10, 2015, at 8:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before November 24, 2015, at the address given below, or by e-mail to FGC@fgc.ca.gov. Written comments mailed or e-mailed to the Commission office, must be received before 12:00 noon on December 4, 2015. All comments must be received no later than December 10, 2015, at the hearing in San Diego, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game

Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sonke Mastrup or Jon Snellstrom at the preceding address or phone number. **Karen Mitchell, Department of Fish and Wildlife, phone 916-445-0826, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action/Results of the Economic Impact Analysis

The proposed regulations will revise and update inland sport fishing regulations starting in 2016. Currently, the seasons, size limits, and bag and possession limits for sport fishing are periodically reviewed by the Department of Fish and Wildlife and the Commission. This set of amendments will clarify regulations for snagging, landlocked salmon, San Francisco and San Pablo Bay, Solano Lake, and reptiles, to reduce public confusion and improve regulatory enforcement. Additionally, this proposal will add a new fishing restriction to protect sturgeon, and increase fishing opportunities on the Sacramento River.

Inland sport fishing regulation's affected parties include recreational anglers, commercial passenger fishing vessels and a variety of businesses that support anglers. The economic impact of regulatory changes for sport fisheries are estimated by tracking resulting changes in fishing effort, angler trips and length of stay in the fishery areas. Distance traveled affects gas and other travel expenditures. Day trips and overnight trips involve different levels of spending for gas, food and accommodations at area businesses as well as different levels of sales tax impacts. Direct expenditures ripple through the economy, as receiving businesses buy intermediate goods from suppliers

that then spend that revenue again. Business spending on wages is received by workers who then spend that income, some of which goes to local businesses. Recreational fisheries spending, thus multiplies throughout the economy with the indirect and induced effects of the initial direct expenditure.

The adoption of scientifically-based regulations provides for the maintenance of sufficient populations of inland sport fish to ensure their continued existence and future sport fishing opportunities that in turn support businesses related to the fishery economy.

The most recent 2011 U.S. Fish and Wildlife national survey of fishing, hunting, and wildlife associated recreation for California reports about 1.35 million resident and nonresident inland sport fish anglers contributed about \$1.2 billion in trip and equipment expenditures to the State's economy. Adding the indirect and induced effects of this \$1.2 billion direct revenue contribution the total economic benefit to California's economy is estimated to be about \$2.03 billion. This corresponds with about \$960 million in total wages to Californians and about 16,000 jobs in the State annually.

This regulatory action may impact businesses that provide services to sport fishermen but these effects are anticipated to range from none to small positive impacts, depending on the regulations ultimately adopted by the Commission. Sport fishing business owners, boat owners, tackle store owners, boat manufacturers, vendors of food, bait, fuel and lodging, and others that provide goods or services to those that sport fish in California may be positively affected to some degree from increases to business that may result under the range of proposed regulations. These anticipated impacts may vary by geographic location. Additionally, economic impacts to these same businesses may result from a number of factors unrelated to the proposed changes to inland sport fishing regulations, including weather, fuel prices, and success rates in other recreational fisheries that compete for angler trips.

(a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

The cumulative effects of the changes statewide are estimated to be neutral to job elimination and potentially positive to job creation in California. No significant changes in fishing effort and sport fishing expenditures to businesses are expected as a direct result of the proposed regulation changes.

(b) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

The cumulative effects of the changes statewide are expected to be neutral to positive to the expansion of businesses currently doing business in California. No significant changes in fishing effort and inland sport fishing expenditures to businesses are expected as a direct result of the proposed regulation changes.

(c) **Benefits of the Regulation to the Health and Welfare of California Residents:**

The Commission anticipates benefits to the health and welfare of California residents. Trout and salmon are a nutritious food source and increasing inland sport fishery opportunities encourages consumption of this nutritious food. Sport fishing also contributes to increased mental health of its practitioners as fishing is a hobby and form of relaxation for many. Sport fishing also provides opportunities for multi-generational family activities and promotes respect for California's environment by younger generations, the future stewards of California's natural resources.

(d) **Benefits of the Regulation to Worker Safety:**

The proposed regulations are not anticipated to impact worker safety conditions.

(e) **Benefits of the Regulation to the State's Environment:**

It is the policy of the state to encourage the conservation, maintenance, and utilization of the living resources of the inland waters under the jurisdiction and influence of the state for the benefit of all its citizens and to promote the development of local California fisheries. The objectives of this policy include, but are not limited to, the maintenance of sufficient populations of all species of aquatic organisms to ensure their continued existence and the maintenance of a sufficient resource to support a reasonable sport use, taking into consideration the necessity of regulating individual sport fishery bag limits in the quantity that is sufficient to provide a satisfying sport. Adoption of scientifically-based inland trout and salmon seasons, size limits, and bag and possession limits provides for the maintenance of sufficient populations of trout and salmon to ensure their continued existence.

Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) **Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:**

The proposed action is not anticipated to have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because the expected impact of the proposed regulations on the amount of fishing activity is anticipated to be minimal relative to recreational angling effort statewide.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The expected impact of the proposed regulations on the amount of fishing activity is anticipated to be minimal relative to recreational angling effort statewide. Therefore the Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing business or the expansion of businesses in California.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities for a salmon and trout sport fishery encourages consumption of a nutritious food.

The Commission does not anticipate any non-monetary benefits to worker safety.

The Commission anticipates benefits to the environment by the sustainable management of California's sport fishing resources.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.

- (f) Programs Mandated on Local Agencies or School Districts: None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.

- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Dated:

Sonke Mastrup
Executive Director

Commissioners
Jack Baylis, President
Los Angeles
Jim Kelllogg, Vice President
Discovery Bay
Jacque Hostler-Carmesin, Member
McKinleyville
Eric Sklar, Member
Saint Helena
Anthony C. Williams, Member
Huntington Beach

STATE OF CALIFORNIA
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Fish and Game Commission



Wildlife Heritage and Conservation
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August 20, 2015

TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action relative to Sections 1.92 and 703, Title 14, California Code of Regulations, relating to Transgenic Definition; Application and Fee Regulations, which will be published in the California Regulatory Notice Register on August 21, 2015.

Please note the date of the public hearing related to this matter and associated deadlines for receipt of written comments.

Mr. Roger Bloom, Department of Fish and Wildlife, phone 916-445-3777, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,


Jon Snellstrom

Associate Governmental Program Analyst

Attachment

LOS ANGELES COUNTY
2015 SEP -3 PM 5:24
COMMISSIONER'S OFFICE
BOARD OF FISH AND GAME
RECEIVED

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 205, 210, 220, 395, 396, 398, 713, 1002, 1050, 1053, 1745, 2116, 2116.5, 2117, 2118, 2120, 2122, 2125, 2150, 2150.2, 2150.4, 2151, 2157, 2190, 2193, 2271, 3005.5, 3007, 3503, 3503.5, 3511, 3513, 3950, 10500, 12000 and 12002, Fish and Game Code and to implement, interpret or make specific Sections 1050 and 2271, of said Code; and Title 50, Code of Federal Regulations, Parts 21.29 and 21.30, proposes to amend Sections 1.92 and 703, Title 14, California Code of Regulations, relating to Transgenic Definition; Application and Fee Regulations.

Informative Digest/Policy Statement Overview

Current law provides for a definition of "transgenic" as:

"Genetically altered by introducing DNA (1) from another species or (2) through engineered endogenous constructs by means such as but not limited to recombinant DNA and RNA techniques to produce, gene addition, deletion, and doubling, or changing the position of the gene. This definition excludes DNA vaccines, individuals produced by the techniques of whole genome ploidy manipulation, and hybridization between closely related species, as in traditional hybridization." – Section 1.92, Title 14, CCR

The Department's review of the current definition of transgenic in Section 1.92 has revealed several vulnerabilities that could prevent the Commission and the Department from adequately protecting native fish, wildlife, and plants from the threat of predation by, competition with, or hybridization with potentially threatening transgenic animals. First, the definition is structured around a finite list of prohibited methods of genetic manipulation coupled with a finite list of exceptions to that prohibition.

A producer of transgenic animals could evade the protections set forth in Title 14, sections 671 and 671.1 (relating to restricted species permits), which incorporate the transgenic definition in Section 1.92, by withholding the first generation of animals subject to direct genetic manipulation and by importing, distributing, and selling only the progeny of that first generation.

Also, as currently written, the definition excludes "hybridization between closely related species" but does not expressly indicate that to qualify for the exemption such hybridization cannot involve transgenic animals. If this interpretation were to prevail it would undermine the entire regulatory program by allowing any producer of transgenic animals to evade regulatory protections merely by importing, distributing, and selling only those transgenic animals that had been hybridized with other lines of transgenic animals.

Current law also provides for regulatory protections of the state from detrimental animals as set forth in Title 14, Section 671:

671(a): *"It shall be unlawful to import, transport, or possess live animals restricted in subsection (c) below except under permit issued by the department."*

671(b): *"...Those species listed because they pose a threat to native wildlife, the agriculture interests of the state or to public health or safety are termed "detrimental animals" and are designated by the letter "D"..."*

671(c)(11): *"Transgenic Aquatic Animals.
Includes freshwater and marine fishes, invertebrates, amphibians, and reptiles (D).*

Note: Unpermitted transgenic aquatic animals are determined to be detrimental to native wildlife, therefore the exemption provided for in Fish and Game Code Section 2150(e) is not applicable."

Fish and Game Code, §2150(e) "Any university, college, governmental research agency, or other bona fide scientific institution, as defined in regulations adopted by the commission, engaging in scientific or public health research is exempt from any permit requirement pursuant to this chapter except for animals whose importation, transportation, or possession is determined by the department, in cooperation with the Department of Food and Agriculture, to be detrimental or cause damage to agriculture, native wildlife, or the public health or safety."

The Department's proposed revision to the definition of transgenic addresses each of these vulnerabilities and, in doing so, seeks to enhance the ability of the Commission and the Department to protect native fish, wildlife, and plants.

It also includes an exemption process for a determination to be made by the Department to render a decision to label a particular transgenic aquatic animal (aquarium fish) as "not detrimental" and therefore not subject to Section 671 and subsection 671.1(a)(8), Title 14, CCR.

The Department is proposing the following regulatory changes:

- Delete the present definition of transgenic in Section 1.92.
- Add a new subsection (a) to Section 1.92 defining transgenic to include all animals "whose genome has been deliberately altered, modified, or engineered through means not possible under natural conditions, by insertion of a foreign gene or genes using genetic engineering methods." This definition is supplemented by four subsections further defining the scope of the definition, which include the following:
 - Subsection (a)(1) clarifies that an animal is transgenic if it contains any artificially transferred genetic material, even if that material is not directly

- “from another species.”
 - Subsection (a)(2) includes a non-exclusive list of examples designed to address some of the most common methods for genetic manipulation.
 - Subsection (a)(3) includes an explicit statement that the “progeny of a transgenic animal or any animal that is the result of breeding involving transgenic animals is transgenic within the meaning of this section.”
 - Subsection (a)(4) reiterates and refines provisions in the existing definition that indicate that animals subject to standard breeding and hybridization practices commonly used by fish hatcheries (when no transgenic animals are involved), whole genome ploidy manipulation, and therapeutic treatment with DNA vaccine are not transgenic.
- Add a new subsection (b) to Section 1.92 which includes a narrowly circumscribed exemption to cover certain transgenic aquarium animals subject to the following restrictions:
 - The transgenic animals will be maintained in closed systems and not placed in the waters of the state; and
 - the Department has determined the transgenic animals are “not detrimental” and pose no risk to native fish, wildlife, or plants; and
 - to qualify for this exemption, the person or entity seeking to import, possess, distribute and sell transgenic aquatic animals within California must submit a letter of application, based on credible science; and
 - to qualify for this exemption, the person or entity seeking to import, possess, distribute, and sell individual transgenic aquatic animals within California must pay a nonrefundable application fee.
- Amend Section 703 by adding a new subsection 703(a)(3) which describes the application process, requirements, and nonrefundable fee of \$4,790 to cover the Department’s costs incurred in processing the application, and the Department’s findings.

Benefits of the Proposed Regulations

The proposed revisions to the definition of transgenic will improve the protection of the environment and the state’s fish, wildlife, and plant resources by providing a modern definition that accounts for future changes in genetic methods and eliminates potential loop holes associated with the progeny of transgenic animals or animals resulting from hybridization with transgenic animals. The new application and approval process for certain transgenic aquatic animals will allow the Department to thoroughly review relevant scientific data to determine there is no reasonably foreseeable risk to native fish, wildlife, or plants. If supported by credible scientific evidence, the Department may make a determination that the animal is not detrimental and therefore not subject to Section 671 and subsection 671.1(a)(8).

Evaluation of Incompatibility with Existing Regulations

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Legislature has delegated authority to the Commission to adopt regulations for ornamental marine or freshwater plants and animals that are not utilized for human consumption or bait purposes and are maintained in closed systems for personal, pet industry, or hobby purposes (Fish and Game Code, Section 2271). The proposed regulations are consistent with current restricted species regulations in Section 671, Title 14, CCR. Commission staff has searched the California Code of Regulations and has found no other State regulations related to the use of transgenic species.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at Embassy Suites – LAX North, 9801 Airport Boulevard, Los Angeles, California, on Thursday, October 8, 2015, at 8:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before October 6, 2015, at the address given below, or by e-mail to FGC@fgc.ca.gov. Written comments mailed or e-mailed to the Commission office, must be received before 5 p.m. on October 5, 2015. All comments must be received no later than October 8, 2015, at the hearing in Los Angeles, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sonke Mastrup or Jon Snellstrom at the preceding address or phone number. **Roger Bloom, Department of Fish and Wildlife, phone 916-445-3777, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time

periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action/Results of the Economic Impact Analysis

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) **Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:**
The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulation is likely to have a positive effect on hobby and pet aquarium businesses within the State.
- (b) **Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:** The regulation is unlikely to affect jobs or businesses. **Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety:** The amendment is unlikely to affect resident's health and welfare or worker safety. **Benefits of the Regulation to the State's Environment:** The proposed amendment allows for a scientific determination to be made by the Department that qualifying transgenic aquatic animals pose no reasonably foreseeable risk to native fish, wildlife, or plants.
- (c) **Cost Impacts on a Representative Private Person or Business:**
The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) **Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:** None.
- (e) **Nondiscretionary Costs/Savings to Local Agencies:** None.
- (f) **Programs Mandated on Local Agencies or School Districts:** None.
- (g) **Costs Imposed on Any Local Agency or School District that is Required to be**

Reimbursed Under Part 7 (commencing with Section 17500) of Division 4,
Government Code: None.

(h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Dated:

Sonke Mastrup
Executive Director

CA FISH AND GAME COMMISSION
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